IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

-

WRIT PETITION NO : 17700 of 1993

Between:

P.Krishna Prasad S/o.Sri Narasimha Appa Rao
R/o.Palakonda Srikakulam District.

... PETITIONER

AND

1 The Visakha Grameena Bank,Srikakulam Rep.by its Chairman Srikakulam.
2 The Board of Directors Visaka Grammena Bank, Srikakulam,

Rep.by its Secretary

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more in the nature of Writ of Certiorari calling for records relating to the orders of 1st respondent vide his proceedings No.D.P.573, dated 29-12-1992 and to set aside the same as illegal and void and consequently to direct the respondents to pay salary and accrued benefits including increments and to treat the suspension period as spent on duty and to pass such other order or orders.

Counsel for the Petitioner: MR.K.BATHI REDDY

Counsel for the Respondents: MR.K.SRINIVASAMURTHY

The Court made the following :

ORDER:

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The petitioner is a Branch Manager of the respondent-Bank. He joined in the service of the respondent in 1977 as a Field Officer and later became the Branch Manager. The Visakhapatnam District Schedule Caste Co-Operative Society Limited issued proceedings on 21.11.1987 and 28.12.1987 sanctioning Rs.78,666.65 ps. and Rs.47,999.78 ps. respectively towards margin money and special_central assistance subsidy for the beneficiaries belonging to Scheduled Castes. He contends that on the basis of the sanction proceedings, he arranged loans for grounding the work to be completed and issued other sanction letters or the loan benefits to the beneficiaries. During December 1987, when there was a visit of the Hon'ble Chief Minister, the petitioner completed all the necessary formalities for disbursement of the units identified by the Scheduled Caste Corporation. The Scheduled Caste Co-Operative Society sanctioned the amount, but did not send the cheque for the amount released. Subsequently, the beneficiaries started repayment as per schedule and it was going on. The petitioner was transferred from Kurmannapalem, Visakhapatnam District to Veeraghattam, Srikakulam District. He handed over charge to his successor on 31.12.1987 and assumed charge at Veeraghattam on 02.01.1988. The successor of the petitioner did not follow up to release the cheque with the sponsoring agency. After his persuasion the cheque was released. Subsequently, through the order dated 22.02.1989 petitioner was kept under suspension. He was served with a charge sheet on 12.05.1988. He submitted his explanation on 06.06.1988. The Enquiry Officer submitted his report on 20.05.1991 by holding that charges I and II are not proved and charge No.III is proved. The first respondent reprimanded him regarding charge No.III through the order, dated 29.04.1992.

2. The petitioner further contends that the second charge sheet was issued to him on 10.03.1989 by framing 16 charges against him. The charges are nothing but repetition of the charges framed earlier. The Enquiry Officer in the said enquiry submitted the report on 29.05.1990 holding that charges I to V, VIII to X and XII to XVI are proved against the petitioner. The petitioner further contends that the findings of the Enquiry Officer are erroneous. The enquiry reports in both the enquiries were not supplied to the petitioner. When the enquiry was kept pending, he filed W.P.No.5056 of 1992 questioning the action

of the first respondent in keeping him under suspension for more than five years. The High Court disposed of the writ petition on 16.04.1992 directing the respondents to pass final order within one month from the date of receipt of the said order, failing which the request of the petitioner for re-instatement to be considered. In pursuance of the direction of the High Court, the first respondent passed the final order on 29.04.1992 and imposed the following punishments: -

> "Degradation to a lower stage in incremental scale by reduction of four (4) increments; recovery of Rs.17,626/- towards loss of interest caused to the Bank in eighteen monthly instalments, in the event of the petitioner failing to make good the entire loss suffered by the bank; and the period of suspension was treated as period not spent on duty;"

The petitioner further contends that the first respondent did not issue any notice to him before imposing the punishment. The punishment imposed by the first respondent is disproportionate to the gravity of the charges. The petitioner further submitted that being aggrieved by the final order of the first respondent dated 29.04.1992, he preferred an appeal before the Board of Directors on 04.06.1992, but it was dismissed by the Board of Directors on 29.12.1992 confirming the order of the first respondent and the petitioner was not given opportunity by the appellate authority before disposing of the appeal. The appellate authority disposed of the appeal without assigning any reasons and it is bad for non-observation of principles of natural justice. Subsequently, when there were vacancies of Senior Managers, the petitioner was called for interview, but he was not considered on the ground that the disciplinary proceedings were pending against him. The petitioner, therefore, approached this Court through this writ petition seeking to set aside the order of the second respondent dated 29.12.1992 and consequently, to direct the respondent to pay salary and other benefits for the period of suspension by treating it as a period on duty.

3. The respondents filed a counter-affidavit resisting the writ petition filed by the petitioner. The following are the brief averments of the counter-affidavit: -

The petitioner blatantly violated the instructions of the bank and released the funds of the bank unauthorisedly under the guise of sanctioning loans to weaker sections. The petitioner was solely responsible for the unauthorized use of the money of the bank to a tune of Rs.17,626/- and also committed certain other irregularities while working as a Branch Manager. The petitioner was given reasonable opportunity to defend himself in the enquiry. The service regulations of the bank do not provide for giving a copy of the enquiry report prior to imposition of the punishment. No prejudice was being caused to the petitioner on account of non-furnishing of the copy of the enquiry report. As per Regulation No. 30 (4) of Sri Visakha Grameena Bank Staff Regulations, 1980, the Chairman and Disciplinary Authority is conferred with the authority to treat the period of suspension as period not spent on duty. The regulations do not provide for serving a second show cause notice before imposing a punishment. The punishment imposed on the petitioner is proportionate to the charges proved against him. The disciplinary authority in the final order dated 29.04.1992 gave reasons for imposing the punishment. Therefore, the Appellate Authority did not give separate reasons while dismissing the appeal. The Regulations do not provide for giving an opportunity to the delinquent officer by the appellate authority before disposal of the appeal. The respondent-Bank had no bias towards the petitioner. The candidates for promotion were called strictly in order of seniority for the purpose of selection on seniority-cum-merit. The petitioner is not entitled for back wages or any benefits for the period of suspension, which was treated as not on duty. The petition is therefore liable to be dismissed.

4. *The point for consideration is whether the orders of the respondents are liable to be quashed?*

Point:

5. The petitioner is contending that after receipt of the enquiry reports, the first respondent did not serve the copy of the enquiry report before imposing the punishment and failed to give opportunity to the petitioner to put forward his contentions and the non-furnishing of the copies of the enquiry

report lead to violation of principles of natural justice. Therefore, the orders of the respondents are liable to be quashed.

6. The respondents are contending that since Sri Visakha Grameena Bank Staff Service Regulations, 1980, do not provide for supply of the copies of the enquiry reports before imposing the punishment and as there is no provision in the Regulations to provide opportunity to the appellant at the time of hearing of the appeal, the writ petition is liable to be dismissed.

7. The learned counsel for the petitioner in support of his contention regarding the supply of the copy of the enquiry report relied on the following decisions rendered by the Apex Court and the High Court.

i) In **Union of India and others V. Mohd. Ramzan Khan,** the Supreme Court held that under first proviso to Article-311 (2) of the Constitution of India, the delinquent employee is entitled to a copy of the enquiry report of the Inquiry Officer and the non-furnishing of the report to the delinquent would be violative of principles of natural justice rendering the final order invalid.

ii) In **Managing Director, ECIL, Hyderabad V. B.Karunakar and others** a Five Judges Bench of the Supreme Court held that when the enquiry officer is other than the disciplinary authority, the delinquent employee is entitled to a copy of the enquiry report and he has a right to reasonable opportunity to represent against the findings of enquiry officer. Denial of right to copy of the enquiry report amounts to denial of reasonable opportunity and violation of Articles 14 and 21 of the Constitution of India.

iii) In **Bhagat Ram V. State of Himachal Pradesh**, the Supreme Court held that any penalty imposed disproportionate to the gravity of the misconduct would be violative of Article-14 of the Constitution of India.

8. The learned counsel for the petitioner by relying on the above decisions submitted that in the light of the above judgments, the orders of the

respondents 1 and 2 are liable to be set aside. The learned counsel for the petitioner further submitted that if the Court comes to a conclusion that the impugned order is liable to be set aside, the petitioner shall be extended all the benefits by holding that there is no punishment in force.

9 . In this matter, the petitioner did not point out any procedural irregularity in the enquiry from the date of framing of charges till the dates of the Enquiry Officer presenting the enquiry report to the first respondent. The only contention of the petitioner is that the copy of the enquiry report was not furnished to him. The respondents also conceded that the copy of the enquiry report was not furnished, but their contention was that they did not furnish the copy of the enquiry report due to absence of a specific rule in the service Regulations, 1980.

10. In **Karunakar's case** (2nd supra), the Supreme Court held that the denial of report of the enquiry officer is the denial of reasonable opportunity and it amounts to violation of principles of natural justice. The Supreme Court further observed that Article-311 (2) of the Constitution of India makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. Whenever the Service Rules contemplate an inquiry before punishment is awarded, and when the Inquiry Officer is not the disciplinary authority, the delinquent-employee will have the right to receive the Enquiry Officer's report notwithstanding the nature of the punishment. Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the wavier of his right. If the petitioner is able to establish that prejudice has been caused to him due to non-furnishing of the enquiry report, in some cases it makes no difference to the ultimate punishment awarded to the delinquent. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. Whether prejudice has been caused to the employee or not on account of the denial of copy of the report has to be considered on the facts and

circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to have all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural explanation of natural justice" which in itself is antithetical to justice.

11. In the case on hand, the petitioner was imposed the punishment of reduction of scale by four increments and recovery of Rs.17,626/- towards loss of interest caused to the Bank. The above legal position makes the position clear that the non-furnishing of the enquiry report amounts to violation of the principles of natural justice, therefore, the impugned order dated 29-4-1992 is liable set aside.

12. The writ petition is allowed. The order of the first respondent dated 29-4-1992 is set aside with the following directions:

The proceedings till the stage of the first respondent receiving the enquiry report from the enquiry officer remains undisturbed. The first respondent has to serve a copy of the enquiry report to the petitioner, call for his written statement and pass appropriate orders after receipt of the written statement. Regarding the acceptance of the report or otherwise, if the first respondent comes to a conclusion that the guilt of the petitioner is proved, he shall issue a final show cause notice proposing the punishment and after receipt of the explanation from the petitioner pass the final order regarding the imposition of the punishment. If the petitioner fails to co-operate by submitting the explanations, the first respondent is at liberty to pass orders on the material available on record. The first respondent is directed to furnish the copy of the enquiry report within one week from the date of receipt of this order calling for the remarks of the petitioner within a reasonable time and take further steps according to the rules and pass final order within a period of three (03) months from the date of receipt of this order. In the event of the petitioner making any claim for restoration of his pay, consequential benefits and refund of the amount, if any, recovered from his salary, such application shall be kept pending till the final order is passed in the enquiry. After passing the final orders, the first respondent shall pass appropriate orders regarding the

entitlement of the petitioner for the benefits depending upon the result of the final order.

Dr. G.YETHIRAJULU, J

25th November 2004

SKM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the 25th day November, Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman, Visakha Grameena Bank,Srikakulam.
2 The Secretary & Board of Directors, Visaka Grammena Bank, Srikakulam.

3 2 CD copies